No. 79-395

In the Supreme Court of the United States

OCTOBER TERM, 1980

UNITED STATES OF AMERICA, PETITIONER

v.

HAZEL MORRISON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

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TABLE OF AUTHORITIES

Case: Page

Commonwealth v. *Manning*, 373 Mass. 438, 367 N.E.2d 635 4

Constitution:

United States Constitution:

Fourth Amendment 2
Fifth Amendment 2
Sixth Amendment 2

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We respond briefly for two purposes: first, to inform the Court of the recent disposition of the civil suits filed by respondent and her attorney as a consequence of the events at issue in the present case; and second, to answer several unfounded assertions made in the brief of the National Legal Aid and Defender Association (NLADA) as amicus curiae in support of respondent.

1. In the petition for a writ of certiorari (Pet. 16 n.10) and in the opening brief for the United States (Br. 35 n.12), we advised the Court that in

August 1979 respondent filed a civil suit in the United States District Court for the Eastern of Pennsylvania (Civ. No. 79-3081), seeking compensatory and punitive damages for the alleged violation of her Fourth, Fifth, and Sixth Amendment rights by agents of the Drug Enforcement Administration in August 1978. In addition, respondent's attorney in the criminal case currently before this Court filed a civil suit of his own in the same district court (Civ. No. 79-3350), seeking damages for the alleged defamation uttered by DEA agents Hopson and Bradley when they spoke with respondent in August 1978.

Both of these civil cases have recently been settled, at the urging of the district court. As part of the settlement in her case, respondent received $4,500, 25% of which was payable to the attorney who represented her in the civil litigation. As part of the settlement in his case, respondent's criminal defense lawyer received $2,000, 25% of which was payable to the attorney who represented him in the civil litigation. Respondent and her defense attorney accepted these sums in full settlement and satisfaction of any and all civil claims that they may have had against the United States or federal agents as a consequence of the events in August 1978 and the related criminal proceedings against respondent. The parties in the civil litigation agreed that the settlement "shall not constitute an admission of liability or fault" on the part of the United States, the defendant DEA agents, or any other federal agents or employees.

2. The NLADA has challenged the government's statements that respondent was not prejudiced by the DEA agents' misconduct in this case (NLADA Br. 2-13). There is no support whatever in the record for amicus's argument. The court of appeals'

opinion does not contain the slightest suggestion that the dismissal of respondent's indictment was based, in whole or in part, on a finding of prejudice. Indeed, the primary point of the opinion is that such a finding is not a prerequisite for the remedy of dismissal. In the court's view, the question of prejudice need not be addressed when there has been a "wrongfully motivated or inadequately justified interference" with the attorney-client relationship (Pet. App. 6a-8a). Respondent, too, does not contend that she was prejudiced by the DEA agents' actions, although she, of course, is the person in the best position to do so.

None of the speculation advanced by the NLADA has any basis in fact. There is no indication in the record that respondent's five-year sentence was the product of "vindictive conduct" by the DEA agents, and we know of no reason to believe that any such conduct occurred. Respondent has never once suggested that she was denied access to the presentence report in her case or that the district court acted in reliance on "confidential sentencing information." Amicus has simply manufactured a series of problems that do not exist and then demanded that the government respond to each one of them. Such injection of nonexistent or irrelevant factual issues at this stage of the proceedings makes no contribution to this Court's resolution of the legal question here presented.

Moreover, the NLADA's brief is inaccurate and misleading when it asserts (Br. 6-8) that respondent was deprived of counsel at plea bargaining and sentencing. Respondent was represented by her present counsel throughout the criminal proceeding against her. Shortly after her first meeting with Agents Hopson and Bradley, respondent informed her at-

torney of the DEA agents' visit and the cooperation they proposed. Respondent also kept her attorney fully apprised of all subsequent dealings with the agents. In fact, defense counsel himself suggested that respondent arrange a second meeting with the agents, and defense counsel was present when respondent telephoned the agents to make an appointment for the following day. The agents did not condition their offer of assistance to respondent on her agreement to dismiss her retained counsel, and respondent has never suggested that she wished to accept the agents' offer and cooperate but that her opportunity to do so was lost after she communicated with her attorney. On the contrary, respondent has voluntarily and steadfastly refused her cooperation, and the record does not contain the slightest hint that she did so against the advice of counsel. Nor is there any reason to believe that the DEA agents' offer of assistance in exchange for cooperation was anything other than genuine. Respondent has not even attempted to argue that the agents sought to mislead her or that they refused to allow her to consult counsel regarding her response to their offer. Any statements or implications to the contrary by amicus are false.

Finally, the NLADA's discussion of "prejudice" (Br. 13) in connection with this case and *Commonwealth* v. *Manning*, 373 Mass. 438, 367 N.E.2d 635 (1977), reveals a fundamental misunderstanding about the meaning of that term in the present context. The nature of the sentence ultimately received by a criminal defendant does not determine whether government misconduct prejudiced the defendant in the sense relevant to the disposition of this case. This case would be no different if respondent had been

sentenced to five weeks' or five months' imprisonment instead of five years'. The critical fact would remain that respondent's criminal prosecution itself, *i.e.*, the legal process leading to her conviction, was not affected in any way by the DEA agents' behavior—and, under the court of appeals' holding, had to be dismissed despite (or perhaps because of) the absence of identifiable prejudice.

For these reasons, as well as the reasons set forth in the government's opening brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

DECEMBER 1980

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